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WAL-MART STORES, INC.
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 MARSHA LOYA,

12 Plaintiff,

13 v.

14 WAL-MART STORES, INC., a
15 Delaware corporation, and DOES 1 -
50,

16 Defendants.
17

Case No. 2:15-CV-04775-ODW-AGR

PROTECTIVE ORDER

18 1. A. PURPOSES AND LIMITATIONS

19 Discovery in this action is likely to involve production of confidential,
20 proprietary, or private information for which special protection from public
21 disclosure and from use for any purpose other than prosecuting this litigation may
22 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
23 enter the following Stipulated Protective Order. The parties acknowledge that this
24 Order does not confer blanket protections on all disclosures or responses to
25 discovery and that the protection it affords from public disclosure and use extends
26 only to the limited information or items that are entitled to confidential treatment
27 under the applicable legal principles. The parties further acknowledge, as set forth
28 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to

1 file confidential information under seal; Civil Local Rule 79-5 sets forth the
2 procedures that must be followed and the standards that will be applied when a
3 party seeks permission from the court to file material under seal.

4 B. GOOD CAUSE STATEMENT

5 This action is likely to involve commercial, financial, and/or proprietary
6 information for which special protection from public disclosure and from use for
7 any purpose other than prosecution of this action is warranted. Such confidential
8 and proprietary materials and information consist of, among other things,
9 confidential business or financial information, information regarding confidential
10 business practices, or other confidential commercial information (including
11 information implicating privacy rights of third parties), information otherwise
12 generally unavailable to the public, or which may be privileged or otherwise
13 protected from disclosure under state or federal statutes, court rules, case decisions,
14 or common law. Accordingly, to expedite the flow of information, to facilitate the
15 prompt resolution of disputes over confidentiality of discovery materials, to
16 adequately protect information the parties are entitled to keep confidential, to
17 ensure that the parties are permitted reasonable necessary uses of such material in
18 preparation for and in the conduct of trial, to address their handling at the end of the
19 litigation, and serve the ends of justice, a protective order for such information is
20 justified in this matter. It is the intent of the parties that information will not be
21 designated as confidential for tactical reasons and that nothing be so designated
22 without a good faith belief that it has been maintained in a confidential, non-public
23 manner, and there is good cause why it should not be part of the public record of
24 this case.

25
26 2. DEFINITIONS

27 2.1 Action: refers to the Complaint for Damages filed by Plaintiff against
28 WAL-MART on May 21, 2015 in the Superior Court of California, County of Los

1 Angeles, Case No. BC582443, and subsequently removed to the United States
2 District Court for the Central District of California, Case No. 2:15-CV-04775-
3 ODW-AGR.

4 2.2 Challenging Party: a Party or Non-Party that challenges the
5 designation of information or items under this Order.

6 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
7 how it is generated, stored or maintained) or tangible things that qualify for
8 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
9 the Good Cause Statement.

10 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
11 their support staff).

12 2.5 Designating Party: a Party or Non-Party that designates information or
13 items that it produces in disclosures or in responses to discovery as
14 “CONFIDENTIAL.”

15 2.6 Disclosure or Discovery Material: all items or information, regardless
16 of the medium or manner in which it is generated, stored, or maintained (including,
17 among other things, testimony, transcripts, and tangible things), that are produced
18 or generated in disclosures or responses to discovery in this matter.

19 2.7 Expert: a person with specialized knowledge or experience in a matter
20 pertinent to the litigation who has been retained by a Party or its counsel to serve as
21 an expert witness or as a consultant in this Action.

22 2.8 House Counsel: attorneys who are employees of a party to this Action.
23 House Counsel does not include Outside Counsel of Record or any other outside
24 counsel.

25 2.9 Non-Party: any natural person, partnership, corporation, association, or
26 other legal entity not named as a Party to this action.

27 2.10 Outside Counsel of Record: attorneys who are not employees of a
28 party to this Action but are retained to represent or advise a party to this Action and

1 have appeared in this Action on behalf of that party or are affiliated with a law firm
2 which has appeared on behalf of that party, and includes support staff.

3 2.11 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.13 Professional Vendors: persons or entities that provide litigation
9 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
11 and their employees and subcontractors.

12 2.14 Protected Material: any Disclosure or Discovery Material that is
13 designated as "CONFIDENTIAL."

14 2.15 Receiving Party: a Party that receives Disclosure or Discovery
15 Material from a Producing Party.

16 17 3. SCOPE

18 The protections conferred by this Stipulation and Order cover not only
19 Protected Material (as defined above), but also (1) any information copied or
20 extracted from Protected Material; (2) all copies, excerpts, summaries, or
21 compilations of Protected Material; and (3) any testimony, conversations, or
22 presentations by Parties or their Counsel that might reveal Protected Material.

23 Any use of Protected Material at trial shall be governed by the orders of the
24 trial judge. This Order does not govern the use of Protected Material at trial.

25 26 4. DURATION

27 Even after final disposition of this litigation, the confidentiality obligations
28 imposed by this Order shall remain in effect until a Designating Party agrees

1 otherwise in writing or a court order otherwise directs. Final disposition shall be
 2 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
 3 with or without prejudice; and (2) final judgment herein after the completion and
 4 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
 5 including the time limits for filing any motions or applications for extension of time
 6 pursuant to applicable law.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection.

10 Each Party or Non-Party that designates information or items for protection under
 11 this Order must take care to limit any such designation to specific material that
 12 qualifies under the appropriate standards. The Designating Party must designate for
 13 protection only those parts of material, documents, items, or oral or written
 14 communications that qualify so that other portions of the material, documents,
 15 items, or communications for which protection is not warranted are not swept
 16 unjustifiably within the ambit of this Order.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations
 18 that are shown to be clearly unjustified or that have been made for an improper
 19 purpose (e.g., to unnecessarily encumber the case development process or to
 20 impose unnecessary expenses and burdens on other parties) may expose the
 21 Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it
 23 designated for protection do not qualify for protection, that Designating Party must
 24 promptly notify all other Parties that it is withdrawing the inapplicable designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in
 26 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
 27 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
 28

1 under this Order must be clearly so designated before the material is disclosed or
2 produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic
5 documents, but excluding transcripts of depositions or other pretrial or trial
6 proceedings), that the Producing Party affix at a minimum, the legend
7 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
8 contains protected material. If only a portion or portions of the material on a page
9 qualifies for protection, the Producing Party also must clearly identify the protected
10 portion(s) (e.g., by making appropriate markings in the margins).

11 A Party or Non-Party that makes original documents available for inspection
12 need not designate them for protection until after the inspecting Party has indicated
13 which documents it would like copied and produced. During the inspection and
14 before the designation, all of the material made available for inspection shall be
15 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
16 documents it wants copied and produced, the Producing Party must determine
17 which documents, or portions thereof, qualify for protection under this Order. Then,
18 before producing the specified documents, the Producing Party must affix the
19 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
20 portion or portions of the material on a page qualifies for protection, the Producing
21 Party also must clearly identify the protected portion(s) (e.g., by making
22 appropriate markings in the margins).

23 (b) for testimony given in depositions that the Designating Party
24 identify the Disclosure or Discovery Material on the record, before the close of the
25 deposition all protected testimony.

26 (c) for information produced in some form other than documentary
27 and for any other tangible items, that the Producing Party affix in a prominent place
28 on the exterior of the container or containers in which the information is stored the

1 legend “CONFIDENTIAL.” If only a portion or portions of the information
 2 warrants protection, the Producing Party, to the extent practicable, shall identify the
 3 protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 5 failure to designate qualified information or items does not, standing alone, waive
 6 the Designating Party’s right to secure protection under this Order for such
 7 material. Upon timely correction of a designation, the Receiving Party must make
 8 reasonable efforts to assure that the material is treated in accordance with the
 9 provisions of this Order.

10 11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 13 designation of confidentiality at any time that is consistent with the Court’s
 14 Scheduling Order.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
 16 resolution process under Local Rule 37.1 et seq.

17 6.3 The burden of persuasion in any such challenge proceeding shall be on
 18 the Designating Party. Frivolous challenges, and those made for an improper
 19 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
 20 parties) may expose the Challenging Party to sanctions. Unless the Designating
 21 Party has waived or withdrawn the confidentiality designation, all parties shall
 22 continue to afford the material in question the level of protection to which it is
 23 entitled under the Producing Party’s designation until the Court rules on the
 24 challenge.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A receiving party may use designated material only
3 for this litigation. Designated material may be disclosed only to the categories of
4 persons and under the conditions described in this Order.

5 7.2 Disclosure of CONFIDENTIAL Material Without Further Approval.
6 Unless otherwise ordered by the Court or permitted in writing by the designator, a
7 receiving party may disclose any material designated CONFIDENTIAL only to:

8 (a) The receiving party's outside counsel of record in this action
9 and employees of outside counsel of record to whom disclosure is reasonably
10 necessary;

11 (b) The officers, directors, and employees of the receiving party to
12 whom disclosure is reasonably necessary, and who have signed the Agreement to
13 Be Bound (Exhibit E-1);

14 (c) Experts retained by the receiving party's outside counsel of
15 record to whom disclosure is reasonably necessary, and who have signed the
16 Agreement to Be Bound (Exhibit E-1);

17 (d) The Court and its personnel;

18 (e) Outside court reporters and their staff, professional jury or trial
19 consultants, and professional vendors to whom disclosure is reasonably necessary,
20 and who have signed the Agreement to Be Bound (Exhibit E-1);

21 (f) During their depositions, witnesses in the action to whom
22 disclosure is reasonably necessary and who have signed the Agreement to Be
23 Bound (Exhibit E-1); and

24 (g) The author or recipient of a document containing the material, or
25 a custodian or other person who otherwise possessed or knew the information.

26 (i) Any mediator or settlement officer, and their supporting
27 personnel, mutually agreed upon any of the parties engaged in settlement
28 negotiations.

1
2 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
3 IN OTHER LITIGATION

4 If a Party is served with a subpoena or a court order issued in other litigation
5 that compels disclosure of any information or items designated in this Action as
6 “CONFIDENTIAL,” that Party must:

7 (a) promptly notify in writing the Designating Party. Such
8 notification shall include a copy of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or
10 order to issue in the other litigation that some or all of the material covered by the
11 subpoena or order is subject to this Protective Order. Such notification shall include
12 a copy of this Stipulated Protective Order; and

13 (c) cooperate with respect to all reasonable procedures sought to be
14 pursued by the Designating Party whose Protected Material may be affected.

15 If the Designating Party timely seeks a protective order, the Party served with
16 the subpoena or court order shall not produce any information designated in this
17 action as “CONFIDENTIAL” before a determination by the court from which the
18 subpoena or order issued, unless the Party has obtained the Designating Party’s
19 permission. The Designating Party shall bear the burden and expense of seeking
20 protection in that court of its confidential material and nothing in these provisions
21 should be construed as authorizing or encouraging a Receiving Party in this Action
22 to disobey a lawful directive from another court.

23
24 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
25 PRODUCED IN THIS LITIGATION

26 (a) The terms of this Order are applicable to information produced
27 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
28 information produced by Non-Parties in connection with this litigation is protected

1 by the remedies and relief provided by this Order. Nothing in these provisions
2 should be construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery
4 request, to produce a Non-Party's confidential information in its possession, and the
5 Party is subject to an agreement with the Non-Party not to produce the Non-Party's
6 confidential information, then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the
8 Non-Party that some or all of the information requested is subject to a
9 confidentiality agreement with a Non-Party;

10 (2) promptly provide the Non-Party with a copy of the
11 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
12 reasonably specific description of the information requested; and

13 (3) make the information requested available for inspection
14 by the Non-Party, if requested.

15 (c) If the Non-Party fails to seek a protective order from this court
16 within 14 days of receiving the notice and accompanying information, the
17 Receiving Party may produce the Non-Party's confidential information responsive
18 to the discovery request. If the Non-Party timely seeks a protective order, the
19 Receiving Party shall not produce any information in its possession or control that
20 is subject to the confidentiality agreement with the Non-Party before a
21 determination by the court. Absent a court order to the contrary, the Non-Party shall
22 bear the burden and expense of seeking protection in this court of its Protected
23 Material.

24 25 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

26 The inadvertent production by any of the undersigned Parties or non-Parties
27 to the Proceedings of any Document, Testimony or Information during discovery in
28 this Proceeding without a "Confidential" designation, shall be without prejudice to

1 any claim that such item is “Confidential” and such Party shall not be held to have
 2 waived any rights by such inadvertent production. In the event that any Document,
 3 Testimony or Information that is subject to a “Confidential” designation is
 4 inadvertently produced without such designation, the Party that inadvertently
 5 produced the Document shall give written notice of such inadvertent production
 6 within twenty-one (21) days of discovery of the inadvertent production, together
 7 with a further copy of the subject Document, Testimony or Information designated
 8 as “Confidential” (the “Inadvertent Production Notice”). Upon receipt of such
 9 Inadvertent Production Notice, the Party that received the inadvertently produced
 10 Document, Testimony or Information shall promptly destroy the inadvertently
 11 produced Document, Testimony or Information and all copies thereof, or, at the
 12 expense of the producing Party, return such together with all copies of such
 13 Document, Testimony or Information to counsel for the producing Party and shall
 14 retain only the “Confidential” designated Materials. Should the receiving Party
 15 choose to destroy such inadvertently produced Document, Testimony or
 16 Information, the receiving Party shall notify the producing Party in writing of such
 17 destruction within ten (10) days of receipt of written notice of the inadvertent
 18 production. This provision is not intended to apply to any inadvertent production of
 19 any Information protected by attorney-client or work product privileges. In the
 20 event that this provision conflicts with any applicable law regarding waiver of
 21 confidentiality through the inadvertent production of Documents, Testimony or
 22 Information, such law shall govern.

23 The disclosure or production of any Documents subject to a legally
 24 recognized claim of privilege (including, without limitation, the attorney-client
 25 privilege, work-product doctrine, or other applicable privilege) shall be protected
 26 and excluded from argument from any party that:

- 27 a. the disclosure was not inadvertent by the Producing Party;
- 28 b. the Producing Party did not take reasonable steps to prevent the

1 disclosure of privileged Documents;

2 c. the Producing Party did not take reasonable or timely steps to rectify
3 such Disclosure; and/or

4 d. such disclosure acts as a waiver of applicable privileges or protections
5 associated with such Documents.

6
7 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
8 PROTECTED MATERIAL

9 When a Producing Party gives notice to Receiving Parties that certain
10 inadvertently produced material is subject to a claim of privilege or other
11 protection, the obligations of the Receiving Parties are those set forth in Federal
12 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
13 whatever procedure may be established in an e-discovery order that provides for
14 production without prior privilege review. Pursuant to Federal Rule of Evidence
15 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
16 of a communication or information covered by the attorney-client privilege or work
17 product protection, the parties may incorporate their agreement in the stipulated
18 protective order submitted to the court.

19
20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
22 person to seek its modification by the Court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this
24 Protective Order no Party waives any right it otherwise would have to object to
25 disclosing or producing any information or item on any ground not addressed in
26 this Stipulated Protective Order. Similarly, no Party waives any right to object on
27 any ground to use in evidence of any of the material covered by this Protective
28 Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

13. FINAL DISPOSITION

After the final disposition of this Action, as defined in paragraph 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14. Any violation of this Order may be punished by any and all appropriate

1 measures including, without limitation, contempt proceedings and/or monetary
2 sanctions.

3
4
5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6
7 DATED: _____
8
9

10 _____
Attorneys for Plaintiff
11

12 DATED: March 15, 2016
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14
15 /s/ Mitchell A. Wrosch
Attorneys for Defendant

16 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
17

18 DATED: March 17, 2016
19

20 
21

22 _____
ALICIA G. ROSENBERG
23 United States District Magistrate Judge
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Central District of
California on [date] in the case of *Loya v. Wal-Mart Stores, Inc.*, 2:15-CV-04775-
ODW-AGR. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____
[print or type full name] of _____ [print
or type full address and telephone number] as my California agent for service of
process in connection with this action or any proceedings related to enforcement of
this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____